bankruptcy schedules. Six days after I filed for bankruptcy, on October 24, 2002, a Wrezic attorney contacted the bankruptcy trustee to settle this state appeal case for $7,500.

The bankruptcy trustee (William Rameker) had already decided my state appeal was a frivolous case and he verbally abandoned this case to my bankruptcy attorney.

The Wrezic attorneys continued to pursue to settle the appeal case and convinced the trustee to settle for $12,000 on November 7, 2002, without my knowledge or permission, after the trustee had already abandoned the case. This settlement was way premature; I had filed for bankruptcy only 20 days earlier. The trustee did not properly investigate my father's probate estate or the merits of my state appeal case, the law or case law involved, or the fact that he was settling a $20 million dollar probate case for only $12,000, and my bankruptcy was for $68,000.

On November 26, 2002 I filed amended bankruptcy schedules to exempt my whole state appeals case for $7,347 ("appeal suit against bio father's estate"). There were no objections filed to this amendment and the case was officially exempted on December 26, 2002, which was before the bankruptcy judge approved the settlement on January 6, 2003. At this hearing on January 6, 2003, I tried to bring the probate exception to the Court's attention, also that the case was initially abandoned and fully exempted, but I was not allowed to speak. After the hearing on January 6, 2003, I requested a rehearing. I have not yet had a rehearing in the bankruptcy court.

I filed a timely appeal to the District Court. On October 28, 2003 the District Court upheld the bankruptcy court settlement but did not address the issues of my appeal

(i.e. that there was no jurisdiction because of the probate exception to federal jurisdiction, that the case was fully exempted).

I filed for a rehearing in the District Court which was denied. The only issue of my appeal addressed in its decision was the probate exception to federal jurisdiction, which the court ruled did not apply.

I filed a timely appeal to the Seventh Circuit Court of Appeals. On June 29, 2005 the Seventh Circuit upheld the District Court's decision to uphold the bankruptcy court settlement.

The Seventh Circuit stated that the probate exception did not apply to my bankruptcy case and that there was a circuit court split on the matter, stating in its decision:

> "We have not decided whether the exception applies in bankruptcy cases, although that question divides our sister circuits."

The Seventh Circuit also ruled that the Rooker-Feldman Doctrine did not apply, that my case was not abandoned by the trustee, and that my "*inheritance claim*" was part of the bankruptcy estate and not fully exempted.

I filed for a timely rehearing en banc, which was denied on July 27, 2005.

Jurisdiction was proper in the Court of Appeals per 28 U.S.C. 158(d) and 28 U.S.C. 1291. Jurisdiction was proper in the District Court per 28 U.S.C. 158(a)(1) and 28 U.S.C. 1334. There was bankruptcy jurisdiction as I filed for bankruptcy on October 22, 2003.

REASONS WHY THE WRIT SHOULD BE GRANTED

A. Preliminary Statement as to Questions 1 and 2

The Supreme Court has held that the probate exception to federal jurisdiction is a limitation to federal jurisdiction over state probate matters, *Markham v. Allen*, 326 U.S. 490, 494 (1946), and has also held that the probate exception applies in bankruptcy cases, *Harris v. Zion's Savings Bank & Trust Co.*, 317 U.S. 447, 450-53 (1943).

Over the years, the lower federal courts have made conflicting interpretations of the probate exception resulting in a split of federal court authority. Because of this split of authority, it is important for this Supreme Court to clarify the scope and application of the probate exception as it is in the public interest to establish a nationally uniform understanding of this probate exception so it can be applied consistently.

B. History of the Probate Exception to Federal Jurisdiction

The judicial power of the United States courts is limited to considering and deciding cases and controversies, U.S. Constitution Article III. Probate matters are not "cases or controversies" within the meaning of Article III, *Rice v. Rice Found.*, 610 F.2d 471, 475 n. 6 (7th Cir. 1979). In *Glidden Co. v. Zdanok*, 370 U.S. 530, 581 and n. 54 (1962) the court observed that the Framers intended that the "case or controversy" requirement would exclude from federal jurisdiction certain "local functions...performed by state courts." n. 54 states "Federal District Courts have been debarred from exercising such a (probate) jurisdiction as one traditionally within the domain of the States."

The probate exception to federal jurisdiction is a subject matter limitation to federal jurisdiction that place matters of probate outside the power of federal courts and are within the exclusive jurisdiction of the state courts. The Supreme Court has held that Congress, in drafting the jurisdiction section of the Judiciary Act of 1789, intended that this limitation be imposed on the federal courts. As stated in *Markham, Id. at* 494, "...the equity jurisdiction conferred by the Judiciary Act of 1789 and Sec. 24(1) of the Judicial Code... did not extend to probate matters." Thus the probate exception to federal jurisdiction is founded in Congress's grant of jurisdiction to the federal courts and has become law through Supreme Court decisions.

The Supreme Court has long affirmed the probate exception, holding that federal courts, including bankruptcy courts, lack subject matter jurisdiction over probate matters, i.e. *Markham*, Id; *Harris*, Id; *Sutton v. English*, 246 U.S. 199, 205 (1918); *Farrell v. O'Brien*, 199 U.S. 89, 114-16 (1905); *Byers v. McAuley*, 149 U.S. 608, 619 (1893); *Armstrong v. Lear*, 25 U.S. 169, 175-76 (1827). "Occasional departures from the rule are always carefully placed on such special grounds that they tend rather to establish than to weaken its force." *In re Broderick's Will*, 88 U.S. 503, 510 (1874).

C. The lower federal courts are in conflict as to the scope of the probate exception and how to apply the exception.

The federal courts seem to be asking for guidance and have voiced their frustration, i.e. *Mangieri v. Mangieri*, 226 F.3d 1, 2 (1st Cir. 2000) ("the precise scope of the probate exception has not been clearly established"); *Golden v. Golden*, 382 F.3d 348, 358 (3d Cir. 2004) ("various descriptions of the probate exception over the years often

seem to substitute one opaque verbal formulation for another."); *Storm v. Storm*, 328 F.3d 941, 943 (7th Cir.2003) ("The precise contours of the probate exception have not been nor really can be clearly defined); *Rice v. Rice Found.*, 610 F.2d 471, 475 (7th Cir. 1979) ("the probate exception is not easily applied to particular cases").

In addition to the confusion among the federal courts as to the scope and application of the probate exception, there is confusion and conflicting opinions as to whether the probate exception is limited to diversity cases; whether the exception applies to bankruptcy jurisdiction over a state probate matter; whether the exception bars the bankruptcy court from hearing the probate matter in the bankruptcy court or by settling a probate matter by a bankruptcy process.

In my Seventh Circuit case, the Seventh Circuit decided that the probate exception did not apply to my bankruptcy case and upheld the settlement of my state probate appeal case. In its decision, the Seventh Circuit acknowledged that there was a conflict among the circuit courts stating: (App. p. 4):

> "We have not decided whether the exception applies in bankruptcy cases, although that question divides our sister circuits."

Further in the decision, the Seventh Circuit cited the bankruptcy case of *Goerg V. Parungao*, 844 F.2d 1562, 1565 (11th Cir. 1988) and compared it to the case of *In re Marshall*, 392 F.3d 1118 (9th Cir. 2004).

In the case of *Goerg*, the court stated that the probate exception applies only to diversity jurisdiction and has no bearing on bankruptcy jurisdiction.

In the bankruptcy case of *In re Marshall*, the court held the probate exception is not limited to diversity cases, but also applies in federal question cases, including bankruptcy cases. The Ninth Circuit held that:

> "all federal courts, including bankruptcy courts, are bound by the probate exception to federal court jurisdiction and that we are required to refrain from deciding state law probate matters, no matter now the issue is framed by the parties." (p.1121)

> "The reach of the probate exception encompasses not only direct challenges to a will or trust, but also questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." (p. 1133).

In addition to the federal circuit conflicts regarding bankruptcy jurisdiction as noted above, listed below are examples of the conflicts and differing reasonings in the application of the probate exception in other cases.

In *Storm v. Storm*, 328 F.3d 941 (7th Cir. 2003), the court found there was no jurisdiction because the dispute was in substance and effect a will contest under applicable state law and, therefore, an ancillary probate proceeding subject to the probate exception. The court stated "Under the so-called "probate exception", even when the requirements of diversity jurisdiction have been met...A federal court nonetheless lacks jurisdiction over cases involving probate matters." Further, the court stated "When probate like matters are at issue in a dispute, however, we reiterate that it is significant to our analysis that state courts vested with probate jurisdiction are much more familiar than are federal courts with the factual and legal issues involved."

In *Bassler v. Arrowood*, 500 F. 2d 138 (8th Cir. 1974) the court held that the probate exception applied to diversity jurisdiction. The court declared that local problems, such as the area of probate and decedent's estates, should be decided by state courts. Further this court decided that because an appeal was pending in the Minnesota Supreme Court that they should not interfere with that procedure.

In *Mangieri v. Mangieri*, 226 F.3d 1, (1st Cir. 2000), the court concluded that the probate exception to diversity jurisdiction applied, and dismissed the case as the claim was within the jurisdiction of the state court, and the relief requested would have interfered with a probate court decision.

In *McKibben v. Chubb*, 840 F.2d 1525, 1529-30 (10th Cir. 1988) the court stated "The standard for determining whether federal jurisdiction may be exercised is whether under state law the dispute would be cognizable only by the probate court" and dismissed the claims in federal court holding that the adjudication of such claims would interfere with the probate court's jurisdiction.

In *Rice v. Rice Found.*, 610 F.2d at 474, 475 (7th Cir. 1979). The court remanded the case because of the question of subject matter jurisdiction because it was a probate matter. The court stated on p. 477 that application of the probate exception requires detailed analysis of state law in regards to state probate procedures. The court stated on p. 475 "As formulated by the Supreme Court, the touchstone in applying the exception is the desire of the federal courts to avoid unnecessary interference with state probate proceedings."

In *Moser v. Pollin*, 294 F.3d 335, 340 (2nd Cir. 2002) the court concluded that the interference prong of the probate exception applied to bar subject matter jurisdiction over the case as a probate case was pending in state court, and that interfering with the functions of a state probate court was a clear instance of an impermissible interference for the purposes of the probate exception.

Federal courts have ruled conflictingly that the probate exception applies in ERISA cases (*In re Estate of Lewis*, 128 F. Supp. 2d 573, 574 (N.D. Ill. 2001) stating that claimed ERISA preemption "does not trump...the long established probate exception to all other potential sources of federal jurisdiction."), and conflictingly ruled that the exception did not apply in the ERISA case of *Community Ins. Co. v. Rowe*, 85 F. Supp. 2d 800, 806 (S.D. Ohio 1999) because it "has been applied only in the context of diversity jurisdiction".

Federal tax courts have ruled that probate exception applies in tax cases and is not limited to diversity cases. *In re Estate of Threefoot*, 316 F. Supp. 2d 636 (W.D. Tenn. 2004) the court held there was no jurisdiction because of the probate exception to federal jurisdiction which extends to matters that would require a federal court to interfere in probate matters.

In the United States Tax Code, Internal Revenue Manual 5.17.13.10 Decedents' Estates, it states "1. A decedent's estate, or probate proceeding, is governed by state law", and 5.17.13.10.2 states "1. Jurisdiction over decedents' estates rests in state courts."

D. There is no bankruptcy jurisdiction over state probate cases as the probate exception applies to all federal jurisdiction.

Even though there is a split of authority in the lower federal courts as to whether the probate exception applies in bankruptcy cases, the Supreme Court has previously evaluated the probate exception in federal jurisdiction cases, including bankruptcy (*Harris v. Zion Savings Bank & Trust Co.*, 317 U.S. 447, 450-453 (1943). In *Harris*, the Court applied the probate exception to overturn a bankruptcy court's assertion of bankruptcy jurisdiction. The Court stated:

> "When we reflect that the settlement and distribution of decedent's estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law; that the federal courts have no probate jurisdiction and have sedulously refrained, even in diversity cases, from interfering with the operations of state tribunals invested with that jurisdiction...." (p. 450). The court concluded:
> "The probate court, not the bankruptcy court, is the appropriate forum for weighing the respective benefits or detriments to those who s[illegible]e in the equity of the decedent's estate." (p. 452).

Federal courts have long denied the jurisdiction of the bankruptcy court to interfere with probate proceedings because of the exception, i.e. *White v. Thompson*, 119 F. 868, 870-71 (5th Cir. 1903); *Bank of Hamburg v. Tri-State Savings & Loan Ass'n*, 69 F.2d 436 (8th Cir. 1934), and has long upheld the principle that the court will not intervene in probate matters, i.e. *In re Thurman Constr., Inc.* 189 B.R.

1004, 1016 (M.D. Fla. 1995); *In re Stiggee*, 167 B.R. 961, 966 (D. Kan. 1994).

Recently, the probate exception was applied to the bankruptcy case of *In re Litzinger*, 322 B.R 108 (BAP 8th Cir. 2005). The court was concerned that bankruptcy jurisdiction would interfere with state law and impact the distribution of property of the probate estate of which only the probate court has jurisdiction over the distribution of the property of the decedent.

In my probate case, the bankruptcy trustee, who made the settlement, interfered with state law by deciding my will contest case was frivolous and barred by a 19 year statute of paternity limitations and then settled the case and the appeal case, and then impacted the distribution of property of the decedent by removing an asset of $12,000 from the probate estate for the bankruptcy court settlement.

Bankruptcy jurisdiction denied the state appeals court its statutory mandate to decide issues of an appeal in its own jurisdiction, and it denied the state probate court of its jurisdiction over property of the decedent and the orderly distribution of such property.

Wisconsin Statute 879.59 requires probate court approval of any settlement affecting the probate estate, and the state probate court did not approve this bankruptcy court settlement of the case. The state appeals case is still open but stayed since 2002 pending the federal court appeals, the underlying state probate case is also still open pending the state court appeal.

If my will contest case and pending appeal in the Wisconsin appeals court was ever property of the bankruptcy

estate, the probate exception should have been applied. My case is a probate matter, not a bankruptcy matter. I did not file a case in federal court to adjudicate any probate matter, I filed my probate case in state court, where an appeal is pending in the state appeals court. For bankruptcy jurisdiction to take over the jurisdiction of a state appeals court and to settle that case is way beyond the jurisdiction of an Article I court whose only purpose is to handle bankruptcy matters.

No where in the jurisdictional statutes of 28 U.S.C. 1334 or 28 U.S.C. 157, or in the bankruptcy code, does it say that there is federal jurisdiction over state probate cases or the appeal of a state probate case. A federal court lacks subject matter jurisdiction over the subject matter...if the case is not one described by any jurisdictional statute, *Powell v. McCormack*, 395 U.S. 486, 512-13 (1969). Fed. R. Civ. Pr. Rule 12(b)(1) requires subject matter jurisdiction. Bankruptcy code 11 U.S.C 522(b)(2)(A) exempts from property of the bankruptcy estate "any property that is exempt under federal law", and this law is the probate exception.

Federal bankruptcy jurisdiction resides in the federal district court per 28 U.S.C. 1334 and is referred to the bankruptcy court per 28 U.S.C. 157(a). The bankruptcy court only has the limited jurisdiction conferred upon it by the district court to handle bankruptcy matters.

Bankruptcy code 157(a) authorizes jurisdiction over matters "arising under title 11 or arising in or related to a case under title 11." My probate case did not arise under or arise in the bankruptcy case, and if my probate case is related, there is nothing to suggest that when the "related to"

jurisdiction was created Congress intended to suspend operation of the probate exception. As the Supreme Court explained, the established rule of statutory construction applicable in the bankruptcy context "is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific, *Midlantic Nat'l Bank v. New Jersey Dept. of Envtl. Prot.*, 474 U.S. 494, 501 (1986).

In the Seventh Circuit's decision on page 3 (App. at 4), the court cited the *In re Marshall* case, Id. as "(applying exception to bankruptcy proceedings that resulted in conflicting state and federal judgments.)"

This is yet another reason for the probate exception to apply to all federal jurisdiction. My case is a perfect example of why two different courts should not make decisions on the same matter because there may be conflicting results. The bankruptcy trustee decided my state will contest case was frivolous and was a paternity case barred by a statute of limitations and that is why the bankruptcy judge approved the settlement. (The trustee's opinion is contrary to Wisconsin law, see *In re the Estate of Thompson*, 261 W.2d 723 (Wis. Ct. App. 2003) holding there is no statute of limitations to decide paternity in a probate matter for inheritance purposes).

The trustee and the bankruptcy judge did not know the pertaining laws of my state probate case, and the judge erroneously relied on the trustee's opinion and approved the settlement of my will contest case. They reached a different legal conclusion on my case than was dictated by state law and that is why the laws of the state should determine probate cases such as mine. In *Thompson v. Magnolia*

Petroleum Co., 309 U.S. 478 (1940) the Supreme Court voiced concern that state rights matters, could by accident of federal jurisdiction, could be determined contrary to the law of the state in which such matters are supreme.

By settling my will contest case that is on appeal in the Wisconsin Court of Appeals, the federal bankruptcy court has interfered with a probate proceeding. The bankruptcy court did adjudicate a probate matter by accepting, what it called "nuisance value" money, to settle what the trustee called a "frivolous case" barred by a paternity statute of limitations. The settlement and the opinion of the trustee that led the bankruptcy court to approve the settlement, they have basically decided the very same issues pending in the state appeals court, which may be considered collateral estoppel and res judicata and would perhaps be binding in the state court and prevent me from continuing to asset my rights to contest my father's will, have paternity determined, and receive my inheritance. This settlement and the opinion of the trustee that predicated the finding of the bankruptcy court, that my case was a paternity case barred by a statute of limitations, could possibly predetermine the result to be reached by the state court. This is a clear instance of an impermissible interference, for the purposes of the probate exception, with pending probate matters in a state court by settling a case contrary to state law and case law, see *Moser v. Pollin*, ~~Id.~~

Several times in its decision, the Seventh Circuit used the words "inheritance claim" to describe my state court appeal case, which is not correct. The Court stated "all the bankruptcy court did was decide that the inheritance claim belonged to the bankruptcy estate." A claim implies a legal right, which I did not have, *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000), I had a dismissed will contest case on appeal.

In addition, the label of a bankruptcy court settlement does not change the fact that my case is a probate case, it is the substance and effect of a case, not just the label attached to it, and that one could not circumvent the probate exception because of a label attached to a case; *Dragan v. Miller*, 679 F.2d 712 (7th Cir. 1982); *Storm v. Storm*, 328 F.3d 941, 945 (7th Cir. 2003); *In re Marshall*, the probate exception applies "no matter how the issue is framed by the parties".

What has happened to my will contest case and state appeal in the hands of bankruptcy jurisdiction are the very reasons there is a probate exception to federal jurisdiction that should apply to all federal jurisdiction, including bankruptcy jurisdiction.

QUESTION NO. 3

A. Preliminary Statement to Question No. 3

Bankruptcy Code 28 U.S.C. 2075 states bankruptcy "rules shall not abridge...any substantive right." Bankruptcy Code 11 U.S.C. 362(b)(2)(A)(i) provides for the continuation of proceedings for the determination of paternity, applicable to all entities involved. The Supreme Court has held that it is in violation of the equal protection clause of the Constitution to treat illegitimate children differently from legitimate children in cases such as *Gomez v. Perez*, 409 U.S. 535 (1973); *Weber v. Aetna Casualty Co.*, 406 U.S. 164 (1972).

B. Bankruptcy jurisdiction that settled my state appeal case and the underlying will contest case should not trump substantial rights granted by the Supreme Court and other sections of the bankruptcy code.

The Supreme Court has ruled that an illegitimate child has a constitutional protected right to inherit from their father, and has rights to prove paternity for inheritance purposes, *Trimble v. Gordon*, 460 U.S. 762 (1977)

If I were a marital child of Ralph Wrezic, I do not believe the bankruptcy court would have settled my will contest case and appeal. On p. 4 of the Seventh Circuit's opinion (App. 6), from the court's wording, it seemed the Seventh Circuit wanted me to prove to them that Ralph Wrezic was my father. The court stated:

> "Even if we assume that Ring is correct about the statute of limitations, she has pointed to no admissible evidence of her purported relation to Wrezic."

That statement from the Seventh Circuit infers that the settlement of my will contest appeal case should be upheld because I did not prove to them that Ralph Wrezic is my father. It is the state probate court that should hear my evidence to decide paternity for inheritance rights, not the federal courts. Bankruptcy code 362(b)(2)(A)(i) should have served to allow my probate case to continue because it would establish paternity, further bankruptcy jurisdiction should not trump the precedent of this Supreme Court in *Trimble*, Id.

QUESTION NO. 4

A. Preliminary Statement to Question No. 4

The Seventh Circuit's decision to uphold the bankruptcy court settlement is in error because it upheld a the settlement of a case the bankruptcy estate did not own because it was exempted out of the bankruptcy estate with no

objections within the 30 days statutory time limit to object before the settlement was approved by the bankruptcy court.

B. The Seventh Circuit is not following the precedent set by this Supreme Court in the case of *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) and is creating a conflict in federal law.

Taylor holds that if there are no timely objections to a debtor's exemptions, "property claimed as exempt...is exempt." In *Taylor*, because the bankruptcy trustee had not timely objected to the debtor's exemption of her lawsuit, the debtor remained the owner of the lawsuit and was entitled to the entire settlement funds of the lawsuit per 522(l). This *Taylor* case is right on the mark, interestingly, in this *Taylor* case, as in my case, the trustee thought the debtor's lawsuit was frivolous. Bankruptcy trustees do make mistakes.

The Seventh Circuit misapprehends the above cited *Taylor* case and the exemption of my will contest appeal. Other circuit courts have followed the precedent in *Taylor*, i.e. *In re Gamble*, 168 F.3d 442 (11th Cir. 1999) the court reversed the decision of the district court's affirmance of a bankruptcy court order, recognizing that "property claimed as exempt... is exempt" and that exempt property is not part of the bankruptcy estate. Quite simply, property that has been exempted belongs to the debtor, *In re Wayne Bell*, 98-5047 (2nd Cir. 1998).

The plain language of the bankruptcy code makes a distinction between property of the bankruptcy estate and exempt property, either it is exempt or it is not. 11 U.S.C. 541, Property of the Estate, does not include exempt property. Pursuant to 11 U.S.C. 522, Exemptions, a debtor may claim property as exempt which the debtor takes free

and clear of any interest of the estate or the claims of creditors, *Owen v. Owen*, 500 U.S. 305, 308 (1991). Per Fed. R. Bank. Proc. 4003(a) a debtor may exempt property by properly filing a list of the property claimed as exempt. If there are no objections within 30 days, and this rule also applies to amended schedules, per Rule 4003(b), the property becomes exempt under 11 U.S.C. 522(l) "Property claimed as exempt on such list is exempt."

On November 26, 2002 pursuant to the above bankruptcy code, I filed amended bankruptcy schedules and claimed my state appeal "appeal suit against bio father's estate" as exempt for $7,347.00. There were no objections filed within the 30 day period for objections, and my appeal case was officially exempted from the bankruptcy estate on December 26, 2002. Because my case was fully exempted before the bankruptcy court approved the settlement on January 6, 2003, it is a void settlement because it settled a case that was not property of the bankruptcy estate.

QUESTION NO. 5

A. Preliminary Statement to Question No. 5

If this Supreme Court grants my writ of certiorari and I am given the opportunity to brief the merits of my case, I respectfully request this Court to exercise its supervisory power in the interest of the law and justice and vacate the decision of the Seventh Circuit because it is so incorrect and contrary to law and case law.

B. In any event, the settlement of my will contest appeal case in the Wisconsin Court of Appeals by the bankruptcy court should not be upheld for any reason.

In addition to the fact that there is no subject matter jurisdiction because of the probate exception, the errors in this case started at the beginning of my bankruptcy case. There is much law and case law and bankruptcy code to support my arguments. Some of these errors include the fact that my state appeal should have been excluded from the bankruptcy for lack of effect on my bankruptcy because the appeal case would only yield a legal decision, not a monetary one. It should have been excluded because it is a personal and private right to determine paternity for inheritance purposes. Bankruptcy code allows for the continuation of proceedings to establish paternity. Supreme Court decisions allow for paternity establishment for inheritance purposes.

The trustee did not have any authority to enjoin into a dismissed case on appeal, as the power of the bankruptcy court extends only to pending cases, my will contest case was not pending but was a final appealable case that was on appeal, it was res judicata, and res judicata applies in bankruptcy. Bankruptcy code requires an entitlement to a property and I did not have an entitlement. The trustee made a legal mistake when he made an erroneous conclusion about state law, that my will contest case was a paternity case barred by a statute of limitations, he did not properly investigate the merits of my case, I was handling the case pro se and he did not talk to me once before he settled it. The Rooker-Feldman Doctrine precludes lower federal courts from second-guessing the merits of a state court judgment.

The trustee verbally abandoned the case, and verbal abandonment has been upheld in the federal court. The case was fully exempted because of no objections before the bankruptcy court approved the settlement. The bankruptcy court did not make any findings of core/non core, or related to jurisdiction, the court approved the settlement and entered

the order without any authority to do so, contrary to bankruptcy code 28 U.S.C. 157(c)(1) and Fed. R. Bank. Proc. 9033. The district court did not do a proper de novo review and just perpetuated and upheld the errors of the bankruptcy court.

The Seventh Circuit perpetuated and upheld the same errors. In addition the Court misconstrued the facts, i.e. calling the case a settlement of an "inheritance claim" when in fact I did not have a claim because it was dismissed in state court; the Court did not follow Supreme Court precedents, i.e. *Taylor v. Freeland & Kronz*; further the Court stated the probate exception did not apply in my case ignoring their own precedent that it was the substance and effect of a case, and that one could not circumvent the probate exception because of the label attached to the case, although the Court did state in its opinion that there is a conflict among the sister circuits as to whether the probate exception is applicable in bankruptcy cases.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that this petition for writ of certiorari should be granted.

Respectfully submitted,

Donna S. Ring

Donna S. Ring
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608-222-7103

October 13, 2005
Dated

App. 1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

July 27, 2005

Before

Hon. Frank H. Easterbrook, Circuit Judge
Hon. Kenneth F. Ripple, Circuit Judge
Hon. Ann Claire Williams, Circuit Judge

No. 04-1222

In re: Donna S. Ring
Debtor-Appellant

Appeal from the United States District Court for the Western District of Wisconsin

No. 03-C-470-S

John C. Shabaz, Judge

ORDER

Upon consideration of Appellant's petition for rehearing en banc, filed on July 13, 2005, no judge in active service has requested a vote thereon and the judges on the original panel have voted to deny the petition. Accordingly,

IT IS ORDERED that the petition for rehearing en banc is hereby denied.

APPENDIX A

App. 2

Unpublished Order
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 29, 2005*
Decided June 29, 2005

Before
Hon. Frank H. Easterbrook, Circuit Judge
Hon. Kenneth F. Ripple, Circuit Judge
Hon. Ann Claire Williams, Circuit Judge

No. 04-1222

In re: Donna S. Ring
Debtor-Appellant

Appeal from the United States District Court for the Western District of Wisconsin

No. 03-C-470-S
John C. Shabaz, Judge

ORDER

After Donna Ring filed for bankruptcy, the trustee proposed to settle a suit that she had pending in Wisconsin state court. Ring objected, but the bankruptcy court approved the settlement. The district court affirmed that decision, as do we.

In February 2002, Ring petitioned a Wisconsin court to award her a share of Ralph Wrezic's estate; she claimed to be a nonmarital daughter mistakenly omitted from his will.

See Wis. Stat. 853.25(2). The court granted summary judgment for the estate and interested parties, including Wrezic's widow, reasoning that Ring, who is over 50, had missed a statute of limitations requiring paternity suits to be brought before the plaintiff's nineteenth birthday. See Wis. Stat. 893.88. The court also concluded that Ring, who was pro se, had failed to meet her evidentiary burden because she never responded to the motion for summary judgment. Ring appealed to the Wisconsin Court of Appeals.

That appeal was still pending when Ring filed for bankruptcy in October 2002. Ring listed the state litigation on her Chapter 7 property schedules but valued it at zero. She objected, however, when the trustee sought approval to settle the matter for $12,000. After the settlement was proposed, she also amended her bankruptcy schedules to list the inheritance claim as exempt property, which she now valued at $7,374. Ring chose that amount because it was the remainder available to her under the "wild card" exemption of 11 U.S.C. 522(d) (5).

Before approving the settlement in January 2003, the bankruptcy court heard testimony from the trustee, who characterized the inheritance claim as frivolous based on his understanding of the statute of limitations and his reading of the trial court's decision and the pro se brief Ring had filed with the appellate court. Counsel for Wrezic's widow testified, too, adding that at summary judgment Ring produced no evidence of paternity anyway. The court agreed with the trustee that the bankruptcy estate should not be squandered on "long shot" litigation, a conclusion shared by the district court when Ring appealed. Ring received a discharge in January 2003 immediately after the bankruptcy court approved the settlement. The state appeal, she says, is stayed pending the outcome of her appeal to this court.

Bankruptcy courts may approve a trustee's proposal to compromise claims of the estate, including legal claims, see 28 U.S.C. 157(b)(2); *W.J. Serves. v. Commercial State Bank of El Campo*, 990 F.2d 233, 234 (5th Cir. 1993) (per curiam); *In re Holywell Corp.*, 913 F.2d 873, 881 (11th Cir. 1990), subject to review by the district court and, in turn, this court, 28 U.S.C. 158(a), (d); see *In re Weinhoeft*, 275 F.3d 604, 604 (7th Cir. 2001). Ring argues, however, that the bankruptcy court lacked jurisdiction to approve the settlement due to the "probate exception" to federal jurisdiction and the *Rooker-Feldman* doctrine. The latter theory is groundless since *Rooker-Feldman*, see *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *Dist. Of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), precludes lower federal courts from reviewing state-court civil judgments, *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1521-22 (2005); *Holt v. Lake County Bd. Of Comm'rs*, 408 F.3d 335, 336 (7th Cir. 2005) (per curiam), which is not what the bankruptcy court did.

Nor is the probate exception relevant. That rule precludes a federal court from administering a decedent's estate or probating a will, see *Markham v. Allen*, 326 U.S. 490, 494 (1946); *Storm v. Storm*, 328 F.3d 941, 943-44 (7th Cir. 2003), or interfering with probate proceedings by contradicting a state court's judgment, *Golden ex rel. Golden v. Golden*, 382 F.3d 348, 358-59 & n. 10 (3d Cir. 2004). We have not decided whether the exception applies in bankruptcy cases, although that question divides our sister circuits. Compare *Goerg V. Parungao*, 844 F.2d 1562, 1565 (11th Cir. 1988) (explaining that probate exception applies only to diversity jurisdiction) with *In re Marshall*, 392 F.3d 1118, 1131-32 (9th Cir. 2004) (applying exception to bankruptcy proceedings that resulted in conflicting state and federal judgments). And we need not answer the question

here because the exception has no possible relevance to this appeal. The bankruptcy court did not interfere with the probate matter; all the bankruptcy court did was decide that the inheritance claim belonged to the bankruptcy estate, and that the trustee's proposed settlement was in that estate's best interests.

Alternatively, Ring argues that her inheritance claim was not property of the bankruptcy estate. A debtor's legal claims are presumptively part of the bankruptcy estate administered by the Chapter 7 trustee. *In re Polis*, 217 F.3d 899, 901 (7th Cir. 2000); *Cable v. Ivy Tech State Coll.*, 200 F.3d 467, 472-73 (7th Cir. 1999); see *Martin v. Monumental Life Ins. Co.*, 240 F.3d 223, 232 (3d Cir. 2001) (right to appeal adverse judgment legal cause of action belonging to bankruptcy estate). Like other property, though, a legal claim may remain outside the estate if the debtor utilizes an available exemption, 11 U.S.C. 522, or the claim may revert back to the debtor if the trustee chooses to abandon it as estate property, *id.* 554. Ring insists that the trustee abandoned her inheritance claim by promising not to pursue it during a telephone conversation with her bankruptcy lawyer, but Ring waived this contention by not asserting it in the bankruptcy court, see *In re Kroner*, 953 F.2d 317, 319 (7th Cir. 1992). Regardless, a trustee cannot abandon property of the estate without notice to creditors, which was not given here. See Fed. R. Bankr. P. 6007(a). Ring also contends that the inheritance claim was exempt property. Ring successfully exempted $7,374 of the settlement proceeds because no one objected, *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), but to the extent the value of the inheritance claim exceeded that amount it remained estate property under the trustee's control. *Polis*, 217 F.3d at 903; *In re Salzer*, 52 F.3d 708, 712 (7th Cir. 1995), *Cable*, 200 F.3d at 473.

Last, Ring maintains that even if the claim was part of the bankruptcy estate, the bankruptcy court abused its discretion by confirming the settlement based on the trustee's mistaken belief that the action was time-barred. She explains—citing a Wisconsin case decided after the hearing—that the statute of limitations for paternity suits would not have prevented her from establishing in the probate proceedings that Wrezic was her father. See Wis. Stat. 893.88; *In re Estate of Thompson*, 661 N.W. 2d 869, 881 (Wis. Ct. App. 2003). In a bankruptcy case, a court measures the value of settlement by asking whether it was in the estate's best interests. *In re Energy Coop.*, 886 F.2d 921, 927 (7th Cir. 1989); *In re Am. Reserve Corp.*, 841 F.2d 159, 161-62 (7th Cir. 1987). This inquiry requires the court to weigh the advantages of settlement, the probable costs and benefits of pursuing litigation, and the likelihood of wasting assets. *Depoister v. Mary M. Holloway Found.* 36 F.3d 582, 585-88 (7th Cir. 1994); *In re Energy Coop., Inc.* 886 F.2d at 927. Here, the bankruptcy court concluded that the inheritance claim had a negligible chance of success and that settlement was a good deal for the estate, and we agree. Even if we assume that Ring is correct about the statute of limitations, she has pointed to no admissible evidence of her purported relation to Wrezic. In the state court she offered only her aunt's unsworn statement claiming that Ring's mother had said Ring was Wrezic's daughter, along with DNA evidence that by Ring's own account shows only that she and her brother are half-siblings. The bankruptcy court did not abuse its discretion, and the judgment of the district court is AFFIRMED.

*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Judgment – Without Oral Argument

Date: June 29, 2005

Before: Honorable Frank H. Easterbrook, Circuit Judge
Honorable Kenneth F. Ripple, Circuit Judge
Honorable Ann Claire Williams, Circuit Judge

No. 04-1222

In Re: Donna S. Ring
Debtor-Appellant

Appeal from the United States District Court for the Western District of Wisconsin

No. 03 C 470, John C. Shabaz, Judge

The judgment of the District Court is affirmed, with costs, in accordance with the decision of this court entered on this date.

(1060-110393)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Donna S. Ring,
Plaintiff-Appellant

v.

William J. Rameker,
Defendant, Appellee

Memorandum and Order
03-C-470-S
(December 22, 2003)
(Hon. John C. Shabaz)

Presently pending before the Court in the above entitled matter is plaintiff-appellant's motion to reconsider the judgment dismissing her appeal of the Bankruptcy Court's decision. She continues to argue that neither court had subject-matter jurisdiction because her contested claim was subject to a probate exception and not the property of the bankruptcy estate. Defendant-appellee's response refers to this Court's determination that the asset belongs to the creditors by virtue of the Chapter 7 bankruptcy filing conferring jurisdiction in the Bankruptcy Court. Plaintiff-appellant Donna S. Ring argues that her claim for an inheritance meets the probate exception to federal jurisdiction and should not have been considered as an asset by the Bankruptcy Court.

Specifically, Ms. Ring claims an inheritance from the estate of Ralph P. Wrezik for "millions of dollars" arguing that the deceased was her father. There is no evidence in the record supporting her claim which was denied by the state probate court. At the time of the filing of her debtor's

petition, the appeal from the probate court's decision was pending in the Wisconsin Court of Appeals.

The probate exception was not addressed by this Court when determining that the bankruptcy estate had as a part of its assets the claim which Ring continues to pursue. The probate exception is best defined in Rice v. Rice Foundation:

> As formulated by the Supreme Court, the touchstone in applying the (probate) exception is the desire of the federal courts to avoid interference with state probate proceedings.
>
> > (F)ederal courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees and heirs" and other claimants against a decedent's estate "to establish their claims" so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.
>
> Once a suit can be characterized as not involving "pure probate," the inquiry then becomes whether resolution of the suit by the federal court will result in "interference" with the state probate proceedings or the assumption of general probate jurisdiction.

610 F.2d 471, 475-76 (7th Cir. 1979) (quoting Markham v. Allen, 326 U.S. 490, 494 (1946).

The Seventh Circuit Court of Appeals has explained the justifications for this exception as follows:

> Certainly the actual probate of a will is within the exception. Beyond that, the contours of the exception are vague and indistinct. As a general matter, courts tend to view the probate exception as extending to all suits "ancillary" to the probate of a will. However, the definition of "ancillary" is not well established.
>
> While the scope of the exception has not been established definitively, this court has identified several uses for the probate exception that can serve as useful guides to decision. The first of these bases is historical. "The Judiciary Act of 1789, ch. 20, S 11, 1 Stat. 78, conferred on the federal courts, in diversity cases, concurrent jurisdiction over 'all suits of a civil nature at common law or inequity.'" Because "suits of a civil nature at common law or in inequity" were assigned in eighteenth-century England either to common-law courts or the chancery court, and since probate matters were assigned to the ecclesiastical court, it is at least arguable that probate matters "were not included in the Judiciary Act's grant of jurisdiction to the federal courts." Apparently for this reason, the Supreme Court said in Markham that "a federal court has no jurisdiction to probate a will or administer an estate..." A second, and "practical," rationale for the probate exception is the need for legal certainty concerning whether probate matters and will contests should be in state or federal courts. "Certainty is desirable in every area of the law but has been thought especially so with

> regard to the transfer of property at death." The thrust of this rationale is that state courts may be the better situs for probate matters because of the relative expertise of state courts with respect to their own probate law. A third rationale is judicial economy. By restricting probate matters and will contests to state courts, questions as to a will's validity can be resolved concurrently with the task of estate administration. Finally, a fourth rationale for the exception is to avoid unnecessary interference with state probate proceedings. "Once a suit can be characterized as not involving 'pure probate,' the inquiry...becomes whether resolution of the suit by the federal court will result in 'interference' with the state probate proceedings or the assumption of general probate jurisdiction."
>
> The fourth rational is "the desire of the federal courts to avoid interference with state probate proceedings." Here, application of the exception to diversity jurisdiction is not necessary to avoid interference with the state's "assumption of general probate jurisdiction."

Georges v. Glick, 856 F.2d 971, 973-74 (7th Cir. 1988) (citations omitted).

The present dispute concerns whether plaintiff-appellant's right of action constitutes property of the bankruptcy estate. All legal and equitable interests of the debtor in property as of the commencement of the bankruptcy case are property of the estate. E.g., 11 U.S.C. 541 (a)(1). This includes causes of action belonging to the debtor. Accordingly, the Court determined that plaintiff-

appellant's interest in the Wrezik estate is property of the bankruptcy estate.

Federal law provides subject-matter jurisdiction over plaintiff-appellant's claim regardless of Ms. Ring's opinion to the contrary. See, e.g., 11 U.S.C. 105; 28 U.S.C. 1334(c). This is not a suit involving "pure probate." Rather, this suit concerns the efforts of the Chapter 7 trustee to collect and reduce to money the property of plaintiff-appellant's estate. See 11 U.S.C. 704(1). The probate exception only bars federal jurisdiction if such jurisdiction would interfere with the probate proceedings. The Court's determination that plaintiff-appellant's interest in the Wrezik estate is property of the bankruptcy estate does not interfere with the state probate proceeding. It does not disrupt the probate proceedings, probate a will, or administer a probate estate. It resolves an issue of bankruptcy law properly before a federal bankruptcy court. Accordingly, the probate exception does not apply.

ORDER

IT IS ORDERED that plaintiff-appellant's request for reconsideration is DENIED.

Entered this 22nd day of December, 2003.

By the Court:

s/ John C. Shabaz
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Donna S. Ring,
Plaintiff-Appellant

v.

William J. Rameker,
Defendant-Appellee

Memorandum and Order
03-C-470-S
(October 28, 2003)
(Hon. John C. Shabaz)

On October 18, 2002 the debtor plaintiff-appellant, Donna S. Ring, filed a Chapter 7 debtor's petition in the United States Bankruptcy Court for the Western District of Wisconsin, the Honorable Robert J. Martin bankruptcy judge presiding. Debtor filed with her schedules a listing of her personal property in Schedule B. It includes an entry entitled "Appeal suit against bio father's estate Location: In debtor's possession" with a zero balance attributed to said asset.

The Trustee, William J. Rameker, on November 11, 2002 moved the Bankruptcy Court for a hearing to approve a settlement agreement in the amount of $12,000.00 and release between the trustee as Chapter 7 Trustee for Donna S. Ring and the estate of Ralph P. Wrezik, the Ralph P. Wrezik testamentary trust, Marjorie Wrezik and the greater Milwaukee Foundation ("Aligned Parties"). The motion also requested a release be ordered of any and all claims that the aligned parties may have against the bankruptcy estate and that the trustee shall compromise in full and complete settlement all claims that the debtor may have against the aligned parties.

Debtor amended her Schedule B on November 25, 2002 listing the value of the appeal suit at $7,374.00 for which she claimed her exemption.

The debtor strenuously objected to the settlement and its disposition claiming it would deprive her of millions of dollars from the estate of Ralph P. Wrezik who she had alleged was her father in her claim before the Ozaukee County Probate Court who she claimed had failed to provide for her in his will by mistake or accident pursuant to Wis. Stats. 853.25(2), ("pretermitted heir").

Her claim against the estate had been denied in Probate Court pursuant to an order for summary judgment in favor of the estate. The case, including the judgment entered against the debtor in favor of the estate, was pending in the State of Wisconsin Court of Appeals as noted in debtor's entry to Schedule B previously cited. The Circuit Court for Ozaukee County (Probate Court) ruled among other things that debtor's claim was outside the statute of limitations Wis. Stats. 893.88. She had not pursued any paternity actions prior to the age of 19 years although she had knowledge of Wrezik since she was 11. Further, she failed to meet the evidentiary burden by her failure to respond to the motion for summary judgment although she appeared at the hearing on summary judgment to advise of the same concerns later addressed to the Court of Appeals, the Bankruptcy Court and this Court.

The Bankruptcy Court found that the debtor's interest was at a high personal level; the offer of settlement of $12,000.00 exceeded the trustee's assessment of the asset's value and that for the debtor to have an interest the amount of the estate would have to exceed the amount required to pay all creditors in full. $12,000.00 would provide only a

small payment to creditors suggesting that the amount would have to be substantially more before the creditors could be paid.

Accordingly, the Bankruptcy Judge granted the trustee's motion in a fairly summary fashion because of his concerns that the $12,000.00 could be dissipated in litigation in the attempt to determine an acceptable settlement. Debtor's standing, although perhaps legally present, was sufficiently remote to permit available funds to be expended to determine whether her standing was great enough to allow her objection to the settlement.

The Bankruptcy Judge declared his decision to be practical and legally sound. The debtor's success was determined to be a long shot which she wanted to take with the funds that were not available.

The Bankruptcy Judge determined the asset belonged to the creditors by virtue of the bankruptcy filing, that the trustee in his fiduciary obligation owes a duty to the creditors and has in good faith represented the settlement to be satisfactory. The Bankruptcy Judge found that debtor's arguments to the contrary should not prevail and that the motion to settle would be granted.

The Bankruptcy Judge accepted the assessment of the trustee under his substantial fiduciary obligation to the creditors, balancing the settlement against the amount that would have been obtained had the debtor's objection prevailed.

A District Court reviews a Bankruptcy Court's legal conclusions de novo and will set aside the Bankruptcy

Court's findings of fact only where they are clearly erroneous.

This Court determines that affirmance is required. The legal conclusions are well grounded in the Bankruptcy Court's assessment of the trustee that although the settlement was of high nuisance level, nonetheless further litigation in pursuit of the claim would be a waste of the bankruptcy estate's assets. The trustee's assessment was reasonable and closure should be provided.

Accordingly,

ORDER

IT IS ORDERED that judgment be entered DISMISSING the appeal and affirming the determination of the Bankruptcy Court that the settlement be approved.

Let Judgment be entered accordingly.

Entered this 28th day of October, 2003.

BY THE COURT:

s/ John C. Shabaz
District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Donna S. Ring
Plaintiff-Appellant

v.

Judgment in a Civil Case
Case No.: 03-C-470-S

William J. Rameker
Defendant-Appellee

This action came for consideration before the court with District Judge John C. Shabaz presiding. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That judgment is entered in favor of defendant-appellee against plaintiff-appellant dismissing her appeal with prejudice and affirming the decision of the bankruptcy court that the settlement be approved.

Approved as to form this 28th day of October, 2003

s/ John C. Shabaz
District Judge

s/ Joseph W. Skupniewitz, Clerk
by Deputy Clerk

Date October 28, 2003

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In the Matter of:	In Bankruptcy No.
Donna S. Ring, Debtor	02-16713-7

ORDER APPROVING SETTLEMENT

This matter having come before the Court upon the Trustee's Motion to approve a Settlement Agreement and Release between the Trustee and the Estate of Ralph P. Wrezic, the Ralph P. Wrezic Testamentary Trust, Marjorie Wrezic, and the Greater Milwaukee Foundation (collectively, "Aligned Parties"), and the Court finding that due notice of said motion was given to all parties in interest, as appears on the Affidavit of Mailing now on file with the Court, and the Court having received the objection of Donna M. Ring, the debtor herein, and the Court having held a hearing on Monday, January 6, 2003 at 10:45 a.m., and the appearances being made by Attorney William J. Rameker for the Trustee, by Attorney Lloyd J. Blaney for the Debtor, who also appeared, and by Attorney Ann Ustad Smith for Marjorie Wrezic, and the Court having heard argument and being fully advised on the premises:

IT IS ORDERED that the Settlement Agreement and Release in this matter be and hereby is approved.

Dated this 14th day of January, 2003.

By the Court: s/ Robert D. Martin, Chief Bankruptcy Judge

APPENDIX E

STATUTES INVOLVED

The statutes relevant to this petition are set forth as follows:

A. 11 U.S.C. 362(b)(2)(A)(i)

> (b) The filing of a petition under section 301, 302, or 303 of this title..., does not operate as a stay--,
> (2) under subsection (a) of this section--
> (A) of the commencement or continuation of an action or proceeding for--
> (i) the establishment of paternity.

B. 11 U.S.C. 522(b)(2)(A)

> (2)(A) any property that is exempt under federal law....

C. 11 U.S.C. 522(l)

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

D. 28 U.S.C. 157(a)

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

E. 28 U.S.C. 157(c) (1)

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

F. 28 U.S.C. 158(a)

(a) The district courts of the United Sates shall have jurisdiction to hear appeals.

G. 28 U.S.C. 158(d)

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

H. 28 U.S.C. 2075

Bankruptcy "rules shall not abridge...any substantive right."

I. Fed. Rules Civil Proc. 12(b)(1)

Rule 12. Defenses and Objections
(b)(1) lack of jurisdiction over the subject matter,

J. Fed. Rules Bank. Proc. 4003(a)

(a) Claim of Exemptions. A debtor shall list the property claimed as exempt under Sec. 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

K. Fed. Rules Bank. Proc. 4003(b)

(b) Objecting to a Claim of Exemptions. A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under Sec. 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, which ever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

L. Fed. Rules Bank. Proc. 9033

Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings.

(a) Service. In non-core proceedings heard pursuant to 28 U.S.C. 157(c)(1), the bankruptcy judge shall file proposed findings of fact and conclusion of law. The clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.

(b) Objections: Time for Filing. Within 10 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific

proposed findings or conclusions objected to and state the grounds for such objection. A party may respond to another party's objections within 10 days after being served with a copy thereof. A party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the district judge otherwise directs.

(c) Extension of Time. The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made no more than 20 days after the expiration of the time for filing objections may be granted upon a showing of excusable neglect.

(d) Standard of Review. The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.

2

No. 05-518

In The Supreme Court of the United States

DONNA S. RING,

Petitioner,

v.

WILLIAM J. RAMEKER,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Intervenors-Respondents-Appellees in the court below, the Estate of Ralph P. Wrezic, Ralph P. Wrezic Testamentary Trust, The Greater Milwaukee Foundation and Marjorie Wrezic, by their attorneys, Michael Best & Friedrich LLP, hereby respond to Petitioner Donna S. Ring's Petition for Writ of Certiorari (the "Petition").

STATEMENT OF THE CASE

This petition arises from a Chapter 7 bankruptcy case filed by Debtor Donna Ring. Ms. Ring filed her bankruptcy case on October 18, 2002. She listed on her original schedules as an asset, but did not exempt, litigation pending in the Wisconsin Court of Appeals. That appeal arose from the probate of the estate of Ralph P. Wrezic, filed as Ozaukee County, Wisconsin Circuit Court Case No. 01-PR-24 (the "Probate Case"). In the Probate Case, Debtor filed a petition to be given a share of the estate pursuant to Wis. Stat. § 853.25, claiming that she is a non-marital child of the decedent Ralph Wrezic, and that he failed to provide for Debtor in his will by mistake or accident (the "Inheritance Claim").

In response, the Estate of Ralph P. Wrezic, the Ralph P. Wrezic Testamentary Trust, The Greater Milwaukee Foundation, residuary beneficiary of the Ralph P. Wrezic Testamentary Trust, and Marjorie Wrezic, surviving spouse and life beneficiary of the Ralph P. Wrezic Testamentary Trust (as described in the District Court's Order of October 28, 2003, the "Aligned Parties") filed a motion for summary judgment dismissing Debtor's Petition in the Probate Case.

At a hearing on April 29, 2002, the Ozaukee County Circuit Court (the "County Court") granted the motion for summary judgment dismissing Debtor's Inheritance Claim. The County Court determined that the statute of limitations, Wis. Stat. § 893.88, precluded her claim and, even if her claim were not so barred, she had failed to meet the evidentiary burdens required to defeat summary judgment.

Debtor's appeal of that ruling to the Wisconsin Court of Appeals was pending when she filed her bankruptcy petition. The Aligned Parties agreed to settle the appeal of the Inheritance Claim with the Chapter 7 trustee, William Rameker ("the Trustee"). On November 11, 2002, the Trustee filed a motion (the "Motion") with the Bankruptcy Court for approval of the settlement ("Settlement") with the Aligned Parties. The Trustee had reviewed the Probate Case, conferred with counsel for the Aligned Parties, and counsel for Debtor. The Trustee concluded that Debtor's Probate case had little chance of success, and that the bankruptcy estate would be best served by accepting the Settlement. The Trustee's Motion explained that when the Settlement was reached, the Trustee would have shortly been required to file a brief in the appeal of the Probate Case and expend resources the bankruptcy estate did not have.

In response to the Trustee's motion, on November 26, 2002, Debtor amended her schedules to claim an exemption of $7,374 in the Inheritance Claim that was the subject of the Settlement and valued the Inheritance Claim at $7,374, even though the Trustee's motion had already established the value of the settled Inheritance Claim at $12,000. On the same day, Debtor objected to the motion for approval of the Settlement. The Trustee did not object to Debtor's amendment to her exemptions.

At a hearing on the matter on January 6, 2003, the Bankruptcy Court approved the Settlement. At the hearing, the Trustee and counsel for Marjorie Wrezic set out the basis for the Settlement, including the fact that the Inheritance Claim on appeal with the Wisconsin Court of Appeals was dismissed on summary judgment by the County Court because the statute of limitations had expired and because Debtor had failed to meet the procedural and evidentiary requirements to defeat summary judgment. At the hearing, Debtor's counsel did not make any argument that the Trustee's failure to object to Debtor's amended exemption (due by December 26, 2002) barred the Settlement.

The Bankruptcy Court entered an order ("Order") approving the Settlement Agreement and Release between the Trustee and the Aligned Parties on January 14, 2003.

On January 23, 2003, Debtor filed a Notice of Appeal of the Order, and on October 28, 2003, the District Court entered judgment dismissing the Debtor's appeal with prejudice. On December 23, 2003, the District Court denied the Debtor's Motion for Rehearing.

Debtor filed a Notice of Appeal to the Seventh Circuit on January 21, 2004. On June 29, 2005, the Seventh Circuit issued a *per curiam* decision affirming the district court. On July 25, 2005, the Seventh Circuit denied Ms. Ring's Motion for Rehearing *en banc*. And on August 10, 2005, the Seventh Circuit denied her Motion to Stay the Mandate. This Petition followed.

ARGUMENT

As was the case with Petitioner's original appeal to the district court from the bankruptcy court, her Motion for Rehearing before the district court, her appeal to the Seventh Circuit Court of Appeals, her petition for rehearing *en banc* to the Court of Appeals, and her Motion to Stay the Mandate in that court, her current Petition for a Writ of Certiorari is meritless. The Petition should be denied.

Ms. Ring's Petition is based on fundamental misunderstandings of the law and its relation to her case. The Petition raises what appears to be four distinct arguments:

1. that the probate exception to federal jurisdiction should have barred the settlement of her Inheritance Claim in the bankruptcy court (Questions Presented 1 and 2);

2. that she was denied equal protection because the Seventh Circuit allegedly deprived her of her right to an inheritance as an illegitimate child (Question Presented 3);

3. that the Seventh Circuit erred when it held that her claimed bankruptcy exemption for her Inheritance Claim was limited to the amount stated on the exemption form (Question Presented 4); and, separately and independently from her other arguments,

4. that this Court should "vacate the decision of the Seventh Circuit because it is so incorrect and contrary to case law," (Question Presented 5).

Ms. Ring's arguments were either not raised below or were correctly decided by the Seventh Circuit.

A. The Probate Exception is Not Implicated in this Case

Ms. Ring argues that the bankruptcy court was without jurisdiction to accept the settlement because doing so violated the probate exception. (Petition at 5-16). As Ms. Ring indicates, the exact parameters of the probate exception and its application in the bankruptcy courts is a contentious issue. Ms. Ring points out that the Seventh Circuit's *per curiam* Order noted:

> We have not decided whether the exception applies in bankruptcy cases, although that question divides our sister circuits.

(Petitioner's Appendix at 4). Ms. Ring however, does not quote the very next sentence and the remainder of the paragraph:

> And we need not answer that question here because the [probate] exception has no possible relevance to this appeal. The bankruptcy court did not interfere with the probate matter; all the bankruptcy court did was decide that the inheritance claim belonged to the bankruptcy estate, and that the trustee's proposed settlement was in the estate's best interest.

(*Id.* at 4-5).

In short then, even though there is a division between the circuit courts on the applicability of the probate exception in bankruptcy courts, Petitioner's case does not implicate that issue. As the Seventh Circuit made clear in its Order, the probate exception is simply irrelevant. Whether or not it applies in the bankruptcy context simply does not matter, Petitioner still loses.

This result is consistent with the Bankruptcy Code, which makes clear that causes of action are the property of the bankruptcy estate and can be disposed of by the trustee. With certain statutory exceptions not applicable here, § 541 defines the property of that estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1). Property of the bankruptcy estate included Ms. Ring's claims for inheritance and any causes of action, including appeal rights. Ms. Ring's appeal was part of a "case," and certainly represented the continued pursuit of an "interest." As the Seventh Circuit has held, "every conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative, is within the reach of § 541." *In re Carousel Int'l Corp.*, 89 F.3d 359, 362 (7th Cir. 1996) (citation and quotation omitted).

Indeed, Bankruptcy Code § 541(a)(5) specifically includes property received by "bequest, devise, or inheritance" property of the debtor's estate. Ms. Ring's expansive reading of the probate exception would repeal that section of the Code. To argue that the Trustee cannot administer such property (particularly where he settled the claim for more than Ms. Ring valued it) is absurd. The bankruptcy court never interfered with the probate court or anything that was before the probate court. The bankruptcy court merely confirmed that the Trustee had done his job.

B. Petitioner waived her Equal Protection Argument

Ms. Ring's next argument is confusing. She first cites *Gomez v. Perez*, 409 U.S. 535 (1973) and *Weber v. Aetna Casualty Co.* 406 U.S. 164 (1972) for the proposition that "[t]he Supreme Court has held that it is a violation of the

equal protection clause of the Constitution to treat illegitimate children differently from legitimate children." (Petition at 16). She then points to *Trimble v. Gordon*, 460 U.S. 762 (1977) and says that "an illegitimate child has a constitutional protected right to inherit from their father, and has rights to prove paternity for inheritance purposes." (*Id.* at 17). The argument continues by citing language from the Seventh Circuit's Order noting that Ms. Ring never proved a biological relationship in the state inheritance, a notation by which she claims the "Seventh Circuit infers that the settlement of my will contest appeal case should be upheld because I did not prove to them that Ralph Wrezic is my father." (*Id.*). Ms. Ring concludes that "bankruptcy jurisdiction should not trump the precedent of this Supreme Court in *Trimble*. (*Id.*).

As a preliminary and dispositive matter, this argument, such as it is, was not raised in any form before the bankruptcy court, the district court or the Seventh Circuit. The argument has therefore been waived and it cannot be argued in this Court. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n. 4 (arguments not raised below are inappropriate for Supreme Court review).

Moreover, nothing done by the Seventh Circuit or any of the other courts to consider Ms. Ring's bankruptcy case denied her right to prove that she was the biological daughter of Ralph Wrezic. Ms. Ring voluntarily filed for bankruptcy protection, and the Trustee properly administered her property, including her lawsuits. There was no denial of equal protection.

C. The Debtor's Exemption of a Portion of the Value of the Settled Inheritance Claim Does Not Remove the Claim from the Bankruptcy Estate.

After the Trustee filed the Motion to approve the Settlement, and the value of the Inheritance Claim as settled was known, Debtor amended her schedules to exempt $7,374 of the Inheritance Claim.[1] This was not the entire value of the Inheritance Claim based upon the Settlement presented to the Bankruptcy Court for approval. However, the Debtor was limited in the dollar amounts she had remaining under the exemption provision used, § 522(d)(5), the so-called "wild card" exemption. Of course, at the time, that valuation was already incorrect given the proposed Settlement for $12,000 pending for the Bankruptcy Court's consideration. Furthermore, it represented a substantial downward adjustment from the value Debtor placed on her interest in the Wrezic estate at the November 13, 2002 meeting of the creditors, where she said that her interest in the Wrezic estate is worth "$10 million dollars."

The Debtor argues that because after the Trustee agreed to settle the Inheritance Claim for $12,000, she amended her bankruptcy schedules to claim an exemption for $7,374.00, and the Trustee did not object to her exemption, the Trustee was prevented from administering the Inheritance Claim and she is permitted to take the entire Inheritance Claim free of any administration by the Trustee. (Petition at 17-19, citing *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992)). Ms. Ring's argument is without merit.

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[1] Of course, that the Debtor listed this claim on her schedules, both original and amended, is an admission that the claims are "property" under the Code. *See In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993) ("Before an exemption can be claimed, it must be estate property.").

Again, as a preliminary and dispositive matter, Debtor's exemption argument was waived. Debtor waived any objection to the settlement of the Inheritance Claim on the grounds that it was exempt in its entirety by failing to raise any such exemption argument at the hearing held on the Trustee's Motion to approve the Settlement on January 6, 2003. The Trustee had given Notice of a Motion to Settle Dispute on November 11, 2002. Debtor responded by amending Schedules B and C to claim as exempt $7,342 of the appeal against the Wrezic Estate which was the amount remaining as an exemption. The thirty days time for the Trustee to object expired on December 26, 2002. Thus, if the Debtor had intended to exempt the entire Inheritance Claim and remove it from the Trustee's administration, that argument was ripe as of January 6, 2003 and Debtor would have raised that exemption argument at the hearing on January 6, 2003. Debtor failed to do so and thereby waived it. *See Sprietsma*, 537 U.S. at 56.

Moreover, *Taylor* is clearly distinguished on its facts. In *Taylor*, this Court held that a trustee is required to object within 30 days, under § 522(l) and Rule 4003(b), after a debtor claims an exemption of property from the bankruptcy estate to which the debtor is not legally entitled, and that the trustee forfeits the right to later contest the exemption by failing to object however improper the exemption claimed. *Id.* at 1648. Taylor does not purport to require a trustee to object to a claimed exemption to which the Debtor is fully entitled. *See In Re Williams*, 104 F.3d 688, 690 (4th Cir. 1997). Because the Trustee could not contest that $7,374.00 of the Settlement is exempt, there was no reason for the Trustee to object. This is precisely what the Seventh Circuit found below. (Petitioner's Appendix at 5 ("to the extent the value of the